



BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Robert De Vries

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 080003

Petitioner, Jules Eskin and Aza Raykhtsaum, Trustees, applied to the Building Commissioner for permission to construction an addition to 199 Longwood Avenue per plans. The application was denied and an appeal was taken to this Board.

On January 10, 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed February 21, 2008 at 7:15 PM in the Main Library (2<sup>nd</sup> floor), as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the petitioner, to its attorney, to the owners of properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearings were published on January 31, 2008 and February 7, 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE  
MASSACHUSETTS  
BOARD OF APPEALS  
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: Eskin Trs Jules Raykhtsaum, Trs Aza  
Location of Premises: 199 LONGWOOD AVE BRKL  
Date of Hearing: 02/21/08  
Time of Hearing: 7:15 p.m.  
Place of Hearing: Main Library, 2<sup>nd</sup> fl.

A public hearing will be held for a variance and/or special permit from:

- 1) 5.20; Floor Area Ratio; Variance Required.
- 2) 5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.
- 3) 5.60; Side Yard Requirements; Variance Required.
- 4) 5.61; Projections into Side Yards; Variance Required.
- 5) 5.62; Fences and Terraces in Side Yards; Variance Required.
- 6) 8.02.1.a; Alteration or Extension; Special Permit Required.
- 7) 8.02.2; Alternation or Extension; Special Permit Required.

Of the Zoning By-Law to construct an addition per plans at 199 LONGWOOD AVE BRKL.  
Said premises located in an SC-7 district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

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On February 21, 2008 at the time and place specified in the notice a public hearing was held by this Board. Present were Chairperson Enid Starr, Jesse Geller and Mark Allen.

The applicants' proposal was presented through their attorney, Kenneth B. Hoffman of Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116.

The applicants, Jules Eskin and Aza Raykhtsaum are proposing to construct a family room addition at the rear of 199 Longwood Avenue. The addition would be constructed by demolishing the existing porch and a portion of the existing family room at the rear of the property. The addition would expand upon the existing family room on the first floor, adding 314 s.f. of habitable space. Due to the steep downward grade at the rear of the property, the addition would be supported on steel columns. The addition would feature French windows with wrought iron railings, and the exterior would be constructed of wood clapboard siding and copper trim. A new balcony and stairs would also be constructed off the rear of the addition. Additionally, a 60 s.f. roof deck would be constructed above the family room, accessed by an existing second floor study.

197/199 Longwood Avenue is a large, two and one-half story, two-family structure located near the intersection of Longwood Avenue and Kent Street. The two units on the property are separated by a vertical party wall. Constructed in 1889 in the Romanesque style, the residence features a gabled roof and two round corner towers on the principle façade. The building exterior features quarry-faced ashlar granite on the first floor, with the upper stories constructed of wood shingles. The structure is located within the Longwood National Historic District. The surrounding neighborhood consists of single, two-family, and multi-family residential properties.

On December 10, 2007, the Brookline Preservation Commission issued a certificate of non-significance for the partial demolition of the existing family room at the rear of 199 Longwood Avenue.

Previous Board action regarding this property is as follows:

September 24, 1947, BOA Case #249 – The Board of Appeals denied a variance to convert 197/199 Longwood Avenue from a two-unit to a four-unit dwelling.

November 24, 1954, BOA Case #695 – The Board of Appeals denied relief to convert 197/199 Longwood Avenue from a two-unit to a three-unit dwelling.

July 17, 1958, BOA Case #887 – The Board of Appeals granted a use variance for 197/199 Longwood Avenue, for conversion of the building into a girls dormitory for Wheelock College.

June 13, 1963, BOA Case #1226 – The Board of Appeals denied a use variance to allow 197/199 Longwood Avenue to be used by Gamma Phi Kappa Fraternity of Northeastern University as a fraternity house.

October 31, 1963, BOA Case #1251 – The Board of Appeals denied a use variance to allow 197/199 to be used as a lodging house.

October 17, 1977, BOA Case #2151 – The Board of Appeals denied an application to subdivide 197/199 Longwood Avenue into two lots. (The property having been converted back to a two-family in 1962)

June 2, 1995, BOA Case #3281 – The Board of Appeals granted a special permit to construct a driveway and four car parking area in side yard utilizing a narrow easement from the adjacent lot at 191/193 Longwood Avenue, subject to a condition that there shall be no parking spaces in front of the building.

November 18, 1998, BOA Case #3281A – The Board of Appeals granted a special permit for two parking spaces in the front yard at 197 Longwood Avenue.

The zoning relief required is as follows:

**Section 5.20 – Floor Area Ratio**

	Allowed		Existing	Proposed	Relief
	By Right	By Special Permit			
F.A.R	0.35 (100%)	0.42 (120%)	0.82 (233%)	0.85 (244%)	VARIANCE

<b>Floor Area (s.f.)</b>	2,933	3,520	6,844	7,158	-
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**Section 5.60 – Side Yard Requirements**

**Section 5.61 – Projections into Side Yards**

**Section 5.62 – Fences and Terraces in Side Yards**

<b>+Dimensional Requirements</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
Side Yard Setback	20 feet	2 feet	2 feet	Special Permit*
Projection into Side Yards (Existing Bay Window)	4 feet into side yard	2 feet	2 feet	Special Permit*
Terraces in Side Yards	6 feet from side property line	>6 feet	5.2 feet	Special Permit*

\*\* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant has stated he will be providing landscaping as a counterbalancing amenity, as well as removal of vinyl siding from a previous addition.

**Section 8.02.1a & 8.02.2 – Alteration or Extension**

A special permit is required to alter a non-conforming structure.

Mr. Hoffman described the core request of this petition as the enclosure of a porch and elimination of a Wal-Mart type window and the restoration of the façade of this building to wood clapboard siding with copper trim and the addition of French windows with wrought iron railings. This will restore the façade to a condition more in keeping with the historic district in which the property is located and more in keeping with the graceful façade that dominates the rest of the building. He noted that the application is essentially about floor area ratio. The actual increase over the existing floor area ratio is fairly minor, constituting approximately 314 s.f. of habitable space and represents just a squaring off of the current screened-in porch to the rest of the building on the first floor. This would make the unit at 199 comparable to its twin at 197 Longwood. Mr. Hoffman noted that given the zoning district, an SC or single family conversion zone, if this were a conversion of a one family to a two family house, the allowed FAR would be 0.50, but because this is already a two family, the maximum FAR under the Zoning Bylaw is 0.35. Although this does not appear to make much sense as applied to this

building, it illustrates that if this was a converted two family, the conversion of the screened-in porch to habitable space would even be less of a change in the floor area ratio. Notwithstanding the SC Zone, however, the petition still requires a variance.

The property is located opposite the Longwood Towers complex on the heavily trafficked Longwood Avenue. Prior relief allowed parking in the front yard because of a lack of sufficient side yards to permit parking alongside the building. In fact, this building has virtually no side yard setback on the side of the unit at 199. The only way to get to the rear yard is either on the first floor or the basement floor level or through the steep stairway off the existing porch. The backyard slopes down at quite a steep angle towards the MBTA tracks and is very close to the MBTA Riverside line and the Riverway which is the main trafficked artery along the Longwood medical area. The survey shows that there is no real access along the westerly property line and no outside access to the rear yard or to the existing deck or porch.

As Mr. Hoffman noted, this addition adds only 314 s.f. of habitable space, although the addition needs to be supported on steel columns due to the steep downward grade at the rear of the property line towards the MBTA railroad tracks. This topographical feature combined with noise from the MBTA and the Riverway, which was recognized by the Board in 2007 as a hardship in the grant of a use variance to the abutting property, makes reasonable use of the open porch problematic. Mr. Hoffman noted that the side yards are unchanged from the existing dimensions, except for a minor change in the easterly side yard where the existing is less than 6 ft. and the proposed is 5.2 ft. Side yard relief can be granted by special permit under Section 5.43. Granting the relief requested will permit the addition to be constructed within its dimensional envelope and not result in any additional occupiable space in the building. Much of the land in the zoning district is generally flat and, in fact, the rear yard of 197 Longwood,

the twin unit to the petitioners' unit, is generally level with the first floor of that unit. Because of the steep slope adjacent to the petitioners' unit, the rear yard is not particularly usable and the outside access to the porch is by the stairway only and is difficult to use. Mr. Hoffman noted that it is a hardship if one cannot make use of this largely existing space in the same manner as the adjacent unit. He also quoted from a well known treatise on zoning by Martin S. Healey that "Even relatively minor hardship can justify a variance where inconsequential dimensional variances are involved. As a general matter, a lesser showing of a hardship is appropriate for dimensional variances because they usually do not change the character of the zoning district or endanger nearby properties with an inconsistent land use." This, Mr. Hoffman suggested is the case with 199 Longwood Avenue.

The petitioners' architect, Michael Price Architects, 80 Watson Road, Belmont, MA, presented the elevations and façade treatment for the addition and answered questions of the Board as to the design and intentions with respect to counterbalancing amenities. A counterbalancing amenity would be, in part, the replacement of the Wal-Mart style façade with materials and color more in keeping with the historic district and improvements to the rear yard with a landscaping plan to be presented to and be approved by the Planning Director.

No other persons from the public spoke in favor or in opposition to the application.

The Board next heard from Lara Curtis of the Planning Department staff. She reported the following as contained in the Planning Board report:

The Planning Board is not opposed to this proposal for a family room addition at the rear of 199 Longwood Avenue. The addition is minimal in size and will be located within the footprint of the existing rear deck, which should have little effect on the overall massing of the structure and will better match the dimensions of the rear addition at 197 Longwood Avenue. The addition will not be visible from the street, and should have little impact on abutters. Additionally, the applicant will be removing vinyl siding and windows from a prior addition and replacing it with wood clapboard siding, copper trim, and new windows, which will better

match the materials and style of the original house and improve the aesthetics of the rear of the building.

Therefore, should the Board of Appeals determine the requirements for a variance have been met, the Planning Board recommends approval of the proposal and the submitted plans, titled "Eskin-Raykhtsaum Family Room, 199 Longwood Avenue" prepared by Michael Price Architect, and last dated 11/30/07, and the site plan prepared by Stephen DesRoche of Neponset Valley Survey Association, Inc., and last dated 10/9/07, subject to the following conditions:

1. Prior to issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, final elevations shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the addition, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Board having heard the testimony set forth above and in light of the topography, a uniquely steep slope, and condition of the dwelling, given its lack of setbacks and therefore lack of access to the rear yard and proximity to the MBTA railroad tracks and the Riverway, believes that the relief can be granted by variance, particularly given that the rather small increase in floor area being requested is de minimis and constitutes the enclosure of existing space and thus not truly adding new or additional habitable space, except by definition, to the dwelling.

The Board therefore votes to grant the required variance and special permits subject to the following conditions:

- 1. Prior to issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**

2. Prior to the issuance of a building permit, final elevations shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the addition, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision  
Of the Board of Appeals



Enid Starr, Chairperson

Filing Date: March 18, 2008

A True Copy  
ATTEST:

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Patrick J. Ward  
Clerk, Board of Appeals